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FILED WITH THE BOARD OF
PSYCHOLOGICAL EXAMINERS
ON February 21, 2008

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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PSYCHOLOGICAL EXAMINERS
Docket No:

IN THE MATTER OF THE SUSPENSION	:	
OR REVOCATION OF THE LICENSE OF:	:	Administrative Action
	:	
MARSHA J. KLEINMAN, PSY.D.	:	AMENDED COMPLAINT
LICENSE NO. 35S100231900	:	
	:	
TO PRACTICE PSYCHOLOGY	:	
IN THE STATE OF NEW JERSEY	:	

Anne Milgram, Attorney General of New Jersey, by Michael S. Rubin, Deputy Attorney General, with offices at 124 Halsey Street, Fifth Floor, Newark, New Jersey 07101, by way of Complaint, says:

ALLEGATIONS COMMON TO ALL COUNTS

1. Complainant, Attorney General of New Jersey, is charged with enforcing the laws of the State of New Jersey pursuant to N.J.S.A. 52:17A-4(h) and is empowered to initiate administrative disciplinary proceedings against persons licensed by the Board of Psychological Examiners (the "Board") pursuant to N.J.S.A. 45:1-14, et seq.

2. The Board is charged with the duty and responsibility of

regulating the practice of psychology in the State of New Jersey pursuant to N.J.S.A. 45:14B-1, et seq.

3. Respondent, Marsha J. Kleinman, Psy.D., at all times relevant hereto, has been licensed to practice psychology in the State of New Jersey and has held License No. 35S100231900.

4. Initials are being used in this Complaint to protect the confidentiality of S.R., the child client herein. The identities of S.R. and her parents are known to Respondent and the Board.

COUNT I
(Gross and/or Repeated Malpractice)

1. The Allegations Common to all Counts are repeated and realleged as if set forth at length herein.

2. In 2002, D.R. filed for divorce from his wife, P.R. S.R., their daughter, was born in March 2000.

3. The Honorable Nancy Sivilli, J.S.C. ("Judge Sivilli"), a Judge in the New Jersey Superior Court Family Part, presided over the divorce and custody dispute, and decided several applications relating to D.R.'s physical custody of S.R. and his visitation.

4. Pursuant to a July 2002 interim Order, S.R.'s parents shared joint legal custody over S.R., pending an evaluation by Edwin A. Rosenberg, Ph.D. regarding parenting and custody issues.

5. At or around this time, P.R. reported that S.R. yelled "no, no, no" when her diaper was being changed.

6. P.R. took S.R. to a pediatrician who referred her to Newark Beth Israel Hospital. Based upon information provided by

P.R., it was reported that D.R. had possibly sexually abused S.R. The allegation was referred to the Division of Youth & Family Services ("DYFS").

7. In September 2002, P.R. applied to limit D.R.'s physical custody of S.R. and visitation because of the alleged sexual abuse. D.R. was granted supervised visitation with S.R.

8. In or about October 2002, DYFS filed an Order to Show Cause to immediately suspend D.R.'s visitation with S.R. based upon P.R.'s allegation that several male pubic hairs had been found in S.R.'s diaper. After holding an expedited plenary hearing, Judge Sivilli denied DYFS' application.

9. On or about June 18, 2003, Judge Sivilli ordered S.R. to be treated by Respondent with play therapy. The Order provided:

S.R. shall immediately commence counseling and play therapy with [Respondent]. [Respondent] shall have management authority over the parenting time between [D.R.] and S.R. The parties shall share equally the costs of said counseling.

10. Play therapy is a form of psychological therapy in which a child leads the play and the therapist observes the child at play and makes appropriate inquiries in order to elicit explanations for the play. A therapist is not supposed to manipulate the situation or suggest explanations or answers to the child based upon the therapist's own interpretation of the play.

11. During one or more sessions in which Respondent was supposed to conduct play therapy with S.R., Respondent instead

questioned S.R. in suggestive manners ostensibly to investigate alleged sexual abuse by D.R.

12. Respondent conducted weekly sessions with S.R. from approximately July 2003 to December 2004, and sent more than ten letters to Judge Sivilli regarding S.R. and/or D.R.'s visitation.

13. In the first paragraph of her first letter to Judge Sivilli, dated July 7, 2003, Respondent stated:

S.R. revealed today in a therapy session that "daddy is bad"; that "daddy tickles here" and pointed to her vaginal area on herself which she refers to as her "tushy"; that "daddy licks my tushy"; that "daddy likes it"; that "daddy licks my tushy a lot of times"; that "daddy pee pees" but not in the "toilet" and that he makes a grunting type noise which she imitated when he "pee pees"; that it feels "bad" and that daddy has a "secret" and if she tells, "mommy is going to die." She further stated that her father licks her "at his house"; "in his room", "on his bed". She also said that "daddy wears a bathrobe" and is "naked" under the robe. She also said, "Tell daddy to stop". She also said, "I [sic] scared of daddy".

14. Prior to the July 7, 2003 letter and prior to notifying the Court or D.R.'s attorney, Respondent instructed P.R. to suspend all contact between D.R. and S.R.

15. In additional letters to Judge Sivilli, dated August 2, 2003, and August 10, 2003, Respondent stated that S.R. suffered a "psychotic-like break in reality" as a result of D.R.'s sexual abuse. Respondent urged the Court to suspend D.R.'s visitation rights immediately. Respondent had not even met with D.R. prior to writing these letters to the Court. A series of applications by

the parties followed regarding D.R.'s visitation.

16. By Order dated August 6, 2003, and based upon Respondent's recommendations, Judge Sivilli suspended D.R.'s visitation with S.R. pending a hearing on September 5, 2003.

17. By Order dated March 3, 2004, Judge Sivilli conditionally restored D.R.'s visitation rights. Among other things, Respondent would have weekly visits with S.R. to prepare for the visitation and Respondent and D.R. would confer in advance of the visits regarding their terms.

18. During a telephone conversation between Respondent and D.R., in which D.R. believed he would speak with S.R., Respondent terminated the conversation with D.R. and said to S.R, who was in the room with Respondent, "Daddy doesn't want to do this."

19. Respondent abused her authority over D.R.'s visitation by arguing with him on the telephone with S.R. in the room and by terminating the conversation with D.R. and falsely telling S.R. that her father did not want to speak with her.

20. Following Respondent's recommendations in a March 23, 2004 letter to the Court, on March 25, 2004, Judge Sivilli voided the reunification time frames in her prior Order and ordered S.R. to continue weekly therapy sessions with Respondent. D.R. would have to meet with Respondent before visitation could resume.

21. In an April 9, 2004 letter to Judge Sivilli, Respondent wrote:

In my professional opinion, if S.R. has any contact with her father at this time it will undermine her relationship with her father at any time in the future. It also puts having [sic] S.R. at risk for being able to have a trusting, healthy male/female relationship when she is an adolescent and during her adulthood. She is at risk for making choices that reflect the dysfunctional nature of her relationship with her father.

* * *

I do not believe my ethics at this time permit me at this time to proceed in any way to help reunify S.R. with her father.... I cannot stress enough that if any visitation were to take place at this time, S.R. is at risk of serious long-term mental illness and possibly having a psychotic break from which she may not recover.

22. By virtue of the foregoing, Respondent overstated the risks of harm to S.R. regarding D.R.'s visitation, failed to clarify psychological issues for the Court, and failed to provide the Court with a balanced assessment of the facts of the case based upon reasonably-available information.

23. Respondent's Court-appointed involvement with S.R. ended in May 2004, when her motion to be relieved as Court-appointed therapist was granted based upon her non-receipt of payment of her fees. Among other things, Respondent sought to charge D.R. and/or the parties for lawyers' fees she incurred when she opposed D.R.'s Subpoena to review her file with the Board.

24. Respondent continued to have private sessions with S.R. until December 2004, when the Honorable Thomas P. Zampino, J.S.C.,

the new Judge assigned to the divorce case, ordered that Respondent's involvement with S.R. be terminated.

25. As stated above, during one or more sessions in which Respondent was supposed to conduct play therapy with S.R., Respondent instead questioned S.R. in suggestive manners ostensibly to investigate alleged sexual abuse by D.R.

26. Respondent's questioning of S.R. regarding alleged sexual abuse by D.R. exceeded Judge Sivilli's Order, which stated that Respondent's sessions with S.R. would be limited to play therapy. The same psychologist can not be a therapist and forensic investigator at the same time with the same client.

27. By questioning S.R. regarding alleged sexual abuse by D.R. during one or more sessions in which she was supposed to conduct play therapy with S.R., Respondent failed to separate the roles of therapist and forensic investigator.

28. At the time Respondent began questioning S.R. regarding alleged sexual abuse by D.R., S.R. was three years old.

29. As seen on one or more videotaped sessions between Respondent and S.R., Respondent questioned S.R. regarding sexual abuse by D.R. in a suggestive, coercive and/or manipulative manner

30. By way of example, and not by way of limitation:

- Respondent bribed S.R. by telling her she could not play with certain cars she wanted to play with until she told Respondent "what happened with

Daddy's pee-pee." (Respondent: "What happened with Daddy's pee-pee?" S.R. "I don't know." Respondent: "You don't want to tell me. Hurry up so we can get to the cars. Tell me the truth. What happened?").

- Respondent repeated statements suggestively when S.R.'s responses did not support her conclusions (Respondent: "You told me Daddy put his pee pee in your mouth." S.R.: "No he didn't" Respondent: "Think about your mouth, just think about your mouth, think about your mouth, think about your mouth." S.R.: "I'm thinking, I'm thinking").
- Respondent asked S.R. "Did you tell me yesterday that Daddy put a marker in you?" S.R. responded "I don't know."
- Respondent said to S.R. "Somebody has a lot of angry feelings. Good." Respondent then asked "Do you have angry feelings inside? Can you talk to me or are you ignoring me?"
- Respondent said to S.R. "Now tell me what you said yesterday when you were in the car.... The other day, yesterday, S.R. called me and said to me that Daddy put a marker in her where? In her where?"
- When S.R. resisted questioning, Respondent told her "It's going to have to be this way so I can make

you feel better so you can go home. Think about Daddy putting his penis, his pee pee, in your mouth."

31. Respondent's questioning of S.R. was likely to cause severe harm to S.R., including, but not limited to, causing implanted memories and/or emotions in S.R. regarding D.R.

32. Respondent's questioning of S.R. was unlikely to elicit accurate information regarding alleged sexual abuse by D.R.

33. Respondent's questioning of S.R. failed to meet professional standards for investigating allegations of sexual abuse in children and/or for questioning children regarding allegations of sexual abuse.

34. Respondent's conduct, as described above, was likely to cause harm to D.R. and S.R.'s parent-child relationship.

35. Respondent's conduct, as described above, constitutes gross professional malpractice in violation of N.J.S.A. 45:1-21(c) and/or repeated acts of professional malpractice in violation of N.J.S.A. 45:1-21(d) and/or professional misconduct in violation of N.J.S.A. 45:1-21(e) and/or violations of N.J.A.C. 13:42-10.8(g), which prohibits the misuse of influence in a manner that exploits a client's trust and dependency.

COUNT II
(Gross and/or Repeated Malpractice)

1. The Allegations Common to all Counts and the previous Count of this Complaint are repeated and realleged as if set forth

at length herein.

2. In undertaking her role as a Court-appointed therapist to conduct play therapy with S.R., Respondent should have obtained all reasonably available information and documentation to allow her to accurately determine what, if any, portion of S.R.'s emotional distress was attributable to sources other than alleged sexual abuse by D.R., including, but not limited to, conflict between her parents, and her parents' psychological states and/or conditions.

3. In the course of treating S.R. and exercising authority over D.R.'s visitation, Respondent failed to obtain reasonably available information and/or documentation, which included, but was not limited to, reports and test data from other professionals who had evaluated S.R. and/or her parents, including, but not limited to, Edwin A. Rosenberg, Ph.D, a court-appointed custody evaluator, Alison Strasser Winston, Ph.D., a Court-appointed psychological evaluator, Robert Rosenbaum, Ed.D., a forensic psychologist retained by D.R., and Laurie L. Newmark, Esq., a Court-appointed guardian ad litem for S.R. who had issued a report regarding the divorce, custody dispute, and allegations of sexual abuse by D.R.

4. Prior to, and in the course of treating S.R., and prior to recommending the immediate suspension of D.R.'s visitation, Respondent failed, among other things, to assess family dynamics, S.R.'s sources of nurturance regarding her family, and/or each family member's concept of emotional and/or physical boundaries.

5. Respondent's failures, as described above, constitute gross professional malpractice in violation of N.J.S.A. 45:1-21(c) and/or repeated acts of professional malpractice in violation of N.J.S.A. 45:1-21(d) and/or professional misconduct in violation of N.J.S.A. 45:1-21(e).

COUNT III
(Gross and/or Repeated Malpractice)

1. The Allegations Common to all Counts and the previous Counts of this Complaint are repeated and realleged as if set forth at length herein.

2. From July 2003 to May 2004, Respondent submitted more than ten letters to Judge Sivilli regarding D.R.'s visitation.

3. In recommending the suspension of D.R.'s visitation, Respondent failed to inform or advise Judge Sivilli, or any party, of information which could be viewed as exculpatory to D.R. regarding allegations of sexual abuse.

4. By way of example, and not by way of limitation:

- In response to several of Respondent's questions, S.R. made statements suggesting she had never seen D.R.'s penis, including that D.R.'s penis "is green" and that "a tablecloth comes out of it."
- S.R.'s reference to a "schlong" suggested that her responses may have been distorted by adult input.
- According to Respondent, S.R.'s yelling "no, no, no" to her mother, while her mother was changing

her diaper, was evidence of sexual abuse. However, there could be other reasons for the distress.

- During a session, S.R. told Respondent that her parents had a big fight and that her father fell down and was bleeding. This information was not related by Respondent to Judge Sivilli at any time, even though it supported D.R.'s allegations that S.R.'s mother exhibited physical violence at times.
- In response to Respondent's persistent questioning of whether S.R. had "angry feelings," S.R. answered "no" repeatedly.
- Respondent asked S.R. if anyone told her to say that D.R. put his penis in her mouth. S.R. answered "yes." When asked who, she said "Mommy."
- S.R. was brought to the Saint Barnabas Hospital emergency room by P.R. after an episode allegedly attributable to sexual abuse by D.R. (drawing on herself with markers, including on her vagina). However, D.R.'s visitation rights were suspended at the time and D.R. had not seen S.R. in more than five months. The hospital also reported that S.R. was calm and not in distress, but Respondent did not raise or address such statements.

5. By virtue of the foregoing, Respondent failed to provide

Judge Sivilli with a fair, objective and/or unbiased assessment of the facts of the case.

6. Respondent's failure to advise Judge Sivilli of information which could be considered exculpatory to D.R. regarding allegations of sexual abuse, occurred where it was foreseeable that her input and recommendations would be relied-upon by the Court to decide issues relating to custody and visitation, and, in fact, were so relied upon.

7. Respondent's failures, as set forth above, constitutes gross professional malpractice in violation of N.J.S.A. 45:1-21(c) and/or repeated acts of professional malpractice in violation of N.J.S.A. 45:1-21(d) and/or professional misconduct in violation of N.J.S.A. 45:1-21(e) and/or violations of N.J.A.C. 13:42-10.8(f), which prohibits the distortion, misuse and/or suppression of psychological findings by Respondent or others.

COUNT IV
(Gross and/or Repeated Malpractice)

1. The Allegations Common to all Counts and previous Counts of this Complaint are repeated and realleged as if set forth at length herein.

2. Respondent holds and has held herself out to be an expert in the areas of forensic investigations and child sexual abuse.

3. By way of example, and not by way of limitation:

- Respondent's letterhead bears the name "Kleinman Psychological and Forensic Services."

- Respondent's C.V. lists "practice areas" of forensic evaluations and "specialty areas" of family violence, abuse, trauma, Battered Women's Syndrome, and child abuse.
- In an August 10, 2003 letter to Judge Sivilli, Respondent objected to the appointment of another licensee to evaluate S.R. because his training "d[id] not qualify him as an expert in the area of child sexual abuse."

4. Respondent's competence, education, and training did not qualify her as an expert in the fields of forensic investigations and/or child sexual abuse.

5. Respondent's treatment and investigation of S.R., as well as many of her findings, recommendations and representations as set forth, among other things, in letters to Judge Sivilli, demonstrate that Respondent was deficient in one or more areas of her practice and professed expertise. These include, but are not limited to: child behavior and cognitive development, child interviewing techniques, Child Sexual Abuse Accommodation Syndrome, etiology and treatment of trauma, professional role differentiation, Post-Traumatic Stress Disorder, Dissociative Identity Disorder, Dissociative Fugue, Eye Movement Desensitization and Reprocessing ("EMDR"), equifinality, integration of data, and psychological treatment and planning.

6. Respondent's misrepresentations regarding her expertise, as well as her unilaterally undertaking an investigation beyond her competence, education, and training, constitutes gross professional malpractice in violation of N.J.S.A. 45:1-21(c) and/or repeated acts of professional malpractice in violation of N.J.S.A. 45:1-21(d) and/or professional misconduct in violation of N.J.S.A. 45:1-21(e) and/or N.J.A.C. 13:42-9.4(a), N.J.A.C. 13:42-9.7(g) and/or N.J.A.C. 13:42-10.4(d), requiring licensees to have and/or maintain professional competence.

COUNT V
(Recordkeeping)

1. The Allegations Common to all Counts and previous Counts of this Complaint are repeated and realleged as if set forth at length herein.

2. Pursuant to the Board's regulations, a licensee is required to maintain contemporaneous records that accurately reflect client contact. N.J.A.C. 13:42-8.1(a) and (b).

3. Pursuant to the Board's regulations, a client record shall contain reports and records from other professionals to be integrated into the client's treatment. N.J.A.C. 13:42-8.1(d)

4. Respondent failed to maintain complete and contemporaneous records accurately reflecting her contact with S.R.

5. Respondent failed to maintain records that contained records from other professionals who had evaluated S.R. and/or her parents and failed to integrate same into S.R.'s treatment.

6. Respondent's conduct, as described above, constitutes professional misconduct in violation of N.J.S.A. 45:1-21(e), N.J.S.A. 45:1-21(h) and/or violations of N.J.A.C. 13:42-8.1(a), (b) and/or (d).

COUNT VI
(Professional Misconduct)

1. The Allegations Common to all Counts and previous Counts of this Complaint are repeated and realleged as if set forth at length herein.

2. In or about 1997, as part of her divorce from her husband, a client then known as D.C. was referred to Respondent for a consultation regarding battered woman's syndrome. Under New Jersey law, in order for a divorcing spouse to claim that she suffers from battered woman's syndrome, a report from a licensee of the Board is required to support that claim.

3. To obtain the report regarding the spousal abuse, D.C. met with Respondent approximately six to seven times for a total of ten hours.

4. During D.C.'s first meeting with Respondent, Respondent asked D.C. for the name of the attorney who was representing her husband in the divorce. When told, Respondent told D.C. that the lawyer was a custody lawyer and that D.C. should be very concerned that her husband was going to seek custody of their daughter.

5. In the course of obtaining information regarding D.C.'s claim that she had been a victim of abuse by her husband, D.C.

advised Respondent that her husband suffered from various sexual addictions.

6. Respondent asked D.C. if she thought her husband had sexually abused their daughter. D.C. said that she did not think so because she had looked for signs of abuse but had not found any.

7. Respondent then raised her voice at D.C. and told D.C. to "put two and two together" and the fact that D.C.'s husband suffered from sexual addiction likely meant that he had also abused their daughter. Respondent told D.C. that if she did not assert that her husband had sexually abused their daughter, D.C. would "lose her daughter" in a custody dispute with her husband.

8. Respondent strongly suggested to D.C. that D.C. should allege that her husband sexually abused their daughter even though D.C. did not believe that such abuse had occurred. Respondent told D.C. that she should make allegations of sexual abuse of her daughter by her husband as soon as possible because she would be less credible if she waited to make such allegations.

9. Throughout the time D.C. met with Respondent regarding her claims of spousal abuse, Respondent appeared to D.C. to be more concerned with the possibility that D.C.'s husband had sexually abused their daughter, as opposed to the spousal abuse.

10. Respondent encouraged D.C. to fabricate allegations of sexual abuse of her daughter by her husband in order to gain leverage in D.C.'s divorce case and custody dispute.

11. D.C. never alleged that her husband sexually abused their daughter because D.C. did not believe that such sexual abuse had occurred.

12. Respondent subsequently referred D.C. to Respondent's sister, who is an attorney, so that D.C. could become represented by Respondent's sister in her divorce.

13. Respondent referred D.C. to her sister through an intermediary because Respondent told D.C. that it was unethical for her to refer D.C. to Respondent's sister herself.

14. Respondent never prepared a report for D.C. regarding her claims of spousal abuse by her husband even though D.C. paid her \$2,500 for such report. Respondent told D.C. that the report could not be used because D.C. was going to become represented by Respondent's sister.

15. Respondent's conduct, as described above, constitutes professional misconduct in violation of N.J.S.A. 45:1-21(e).

WHEREFORE, Complainant, Attorney General of New Jersey, demands the entry of an Order:

- (1). Suspending or revoking Respondent's license to practice psychology, pursuant to N.J.S.A. 45:1-21;
- (2). Imposing civil penalties upon Respondent for each separate offense set forth herein, pursuant to N.J.S.A. 45:1-22(b) and/or N.J.S.A. 45:1-25;
- (3). Requiring Respondent to pay the Board's costs in

this matter, including investigative costs, fees for expert witnesses, attorneys' fees and costs of hearing, including transcript costs, pursuant to N.J.S.A. 45:1-25; and

- (4). For such other and further relief as the Board deems just and appropriate.

ANNE MILGRAM

ATTORNEY GENERAL OF NEW JERSEY

By: 

Michael S. Rubin

Deputy Attorney General

Date: February 21, 2008